

Shipping 2022

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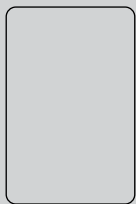
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Shipping

2022

Contributing editors**Kevin Cooper and Nico Saunders****MFB Solicitors**

Lexology Getting The Deal Through is delighted to publish the 14th edition of *Shipping*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on India.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Kevin Cooper and Nico Saunders of MFB Solicitors, for their continued assistance with this volume.



London
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Contents

Global overview	5	Malta	113
Kevin Cooper and Nico Saunders MFB Solicitors		Kevin F Dingli and Suzanne Shaw Dingli & Dingli Law Firm	
Angola	8	Mozambique	126
José Miguel Oliveira, Filipe Rocha Vieira and Ivo Calueio Mahumane VdA		Filipe Rocha Vieira, José Miguel Oliveira and Kenny Laisse VdA	
Australia	18	Netherlands	136
Geoff Farnsworth, Nathan Cecil and Joshua Clarke Holding Redlich		Charlotte van Steenderen and Arnold van Steenderen Van Steenderen MainportLawyers	
Brazil	28	New Zealand	154
Godofredo Mendes Vianna, Camila Mendes Vianna Cardoso and Lucas Leite Marques Kincaid Mendes Vianna Advogados		Simon Cartwright, Zoe Pajot and Lydia Sharpe Hesketh Henry	
Cyprus	40	Nigeria	163
Michael McBride and Yiannis Christodoulou Chrysses Demetriades & Co LLC		Funke Agbor and Chisa Uba Dentons ACAS-Law	
Ecuador	48	Norway	173
Leonidas Villagran Villagran Lara Attorneys		Anne Dahl Frisak, Geir Gustavsson, Per Aksel Hammer Krog and Sondre Vegheim Advokatfirmaet BAHR AS	
Egypt	57	Portugal	188
Hamdy Madkour and Mohamed Farid Eldib Advocates		Ana Cristina Pimentel Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL	
Ghana	65	Russia	196
Akua Serwaa Asomani-Adem, Kimathi Kuenyehia, Sr, Akua Pinamang Addae and Enid Baaba Dadzie Kimathi & Partners Corporate Attorneys		Alexander Mednikov Jurinflot International Law Office	
India	76	Singapore	204
Gautam Bhatkar Phoenix Legal		Haridass Ajaib, Augustine Liew, Thomas Tan and V Hariharan Haridass Ho & Partners	
Italy	84	South Korea	217
Filippo Pellerano and Francesco Gasparini Studio Legale Mordiglia		Sung Keuk Cho and Thomas Lee Cho & Lee	
Japan	95	Taiwan	226
Shuji Yamaguchi Okabe & Yamaguchi		Daniel T H Tsai Lee and Li Attorneys at Law	
Malaysia	103	Turkey	235
Siva Kumar Kanagasabai and Trishelea Ann Sandosam SKRINE		Caglar Coskunsu, Burak Cavus and Onur Azakli Cavus & Coskunsu Law Firm	

United Arab Emirates **246**

Bashir Ahmed, Chatura Randeniya and Mevan Bandara
Afridi & Angell

United Kingdom **255**

Kevin Cooper, Nico Saunders and Kirsten Jackson
MFB Solicitors

United States **273**

Bruce G Paulsen and Brian P Maloney
Seward & Kissel LLP

Mozambique

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NEWBUILDING CONTRACTS

Transfer of title

- 1 | When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Shipbuilding contracts are specially governed by the provisions of the 1888 Commercial Code, which are silent in this respect. Therefore, by reference to the principle of private autonomy, enriched in Mozambican law, parties are free to agree upon when the title shall pass to the shipowner. Although experience tells us that parties usually agree that title shall pass upon delivery of the ship, some shipbuilding contracts provide for title to pass as the ship is constructed (milestones). Where the shipbuilding contract is silent then, by reference to the general principles established in the Civil Code, title shall pass from the shipbuilder to the shipowner on physical delivery of the ship and full payment of the contract price.

Shipbuilding contracts are subject to registration with the Maritime National Administration.

Refund guarantee

- 2 | What formalities need to be complied with for the refund guarantee to be valid?

Refund guarantees usually take the form of an undertaking of a bank or other guarantor, whereby it is agreed that, if the shipbuilder fails to refund the monies advanced as instalments of the contract price upon the shipowner's having terminated the same for a good reason, the bank or the guarantor shall then pay the relevant sums to the shipowner on behalf of the shipbuilder.

The refund commitment can, therefore, be construed either as a conventional guarantee of the shipbuilder or as an 'on demand' instrument, possibly in the form of a guarantee on first demand or a standby letter of credit. However, the issuance of these guarantees is not subject to any special formality or requirement, being up to the parties to agree on its terms and conditions. Nevertheless, to guarantee their smooth and straightforward enforceability, it is important to make sure that they are written in a clear manner, that guarantor's undertaken is expressly established, as well as the amount secured, the validity or term of the guarantee and the conditions for its enforceability and assignment (to the extent applicable).

Court-ordered delivery

- 3 | Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

The retention of a vessel by the yard is only possible in the events where the shipbuilder holds a credit against the shipowner in connection with costs or damages incurred with the vessel. Where retention is deemed unlawful, then the shipowner is entitled to initiate court proceedings against the shipbuilder to request delivery of the vessel or claim compensation for losses suffered.

Defects

- 4 | Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

Where the vessel is defective, claims for damages arising out of shipbuilding contacts must be constructed as claims in contract and lie on the regime established for the sale of defective goods.

Under the Civil Code (article 913 et seq), and without prejudice to a different agreement between the parties under the principle of private autonomy, the shipowner has 30 days from the date of the detection of the defects and six months from the vessel's delivery date to notify the shipbuilder to remedy the detected defects or, if necessary and physically possible, replace the goods, except in the event that the shipbuilder without fault was not aware of the defects (these time periods do not apply in the case of wilful misconduct or deceit). If the shipbuilder fails to remedy the defects, the shipowner is entitled to request a reduction of the agreed price (if he or she would still be interested in the purchase if he or she had known of the defects, but for a lower price) or to the annulment of the shipbuilding agreement. Judicial enforcement of such rights must occur within six months of notification of the defects. Pursuant to article 915 of the Civil Code, the shipowner may also claim compensation for the damages arising from the shipbuilding contract, except if the shipbuilder without fault was not aware of the defects.

The legal regime of sale of defective goods also applies to the contractual relationship between a purchaser of the vessel and the original shipowner. As for a third party that has sustained damages from the defects, it may claim compensation against both the shipbuilder and the shipowner on the basis of the general terms of non-contractual liability.

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

5 | What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

All ships are eligible for registration under the flag of Mozambique.

Vessels under construction may also be registered; still, the registration will be deemed and remain provisional until the vessel is finished.

6 | Who may apply to register a ship in your jurisdiction?

Only nationals of Mozambique (individuals or legal entities majority-owned by Mozambicans) and foreigners (individuals or legal entities) that comply with the terms set under the special registration regime applicable to cabotage activities, enacted by to Decree 35/2016, are permitted to register vessels under a Mozambican flag.

Documentary requirements

7 | What are the documentary requirements for registration?

Ships must be registered before the relevant port and maritime authorities (flag registration) and also before the Legal Entities Registry Office (CREL) (commercial registration).

Flag registration is dependent on the filing of a set of documents with the port and maritime authorities (ie, the National Maritime Institute (INAMAR) and the relevant harbour master or port captaincy.

In addition to the relevant Protocol of Delivery and Acceptance for new buildings, or Bill of Sale and Deletion Certificate (where the vessel was previous registered in another registry) for second-hand ships, the applicant is required to disclose a number pieces of information, including:

- shipowner's constitutional documents;
- customs documents (for imported vessels);
- vessel's name and details;
- authorisation from the Ministry of Fisheries or the Ministry of Transports, where applicable;
- reference to main activities and areas where the vessel is to be engaged and navigate;
- certified copies of the tonnage and navigability certificates;
- name of the classification society and class certificate;
- vessel's characteristics and propulsion system;
- shipyard and year of construction; and
- copies of the vessel's constitutional certificates.

Further, flag registration is dependent on the satisfactory outcome of a physical inspection to be carried out by INAMAR's technicians to the vessel.

Dual registration

8 | Is dual registration and flagging out possible and what is the procedure?

Dual registration is not permitted. However, flagging out may only be accepted for foreign vessels performing cabotage activities in Mozambique in accordance with the terms set under Decree 35/2016.

Mortgage register

9 | Who maintains the register of mortgages and what information does it contain?

Mortgages encumbering Mozambican ships must be registered before the CREL or with the Central Registry of Movable Securities. The information is maintained under the supervision of the relevant Registrar (public officer) and is available for public consultation. The register includes information on:

- the type and term of the mortgage;
- the parties involved; and
- the amount of the credit (capital, accessories to the credit and interests).

Mortgages must also be endorsed in the vessel's passport.

LIMITATION OF LIABILITY

Regime

10 | What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Mozambique is not a party to the 1976 Convention on Limitation of Liability for Maritime Claims. Conversely, both the 1924 International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Seagoing Vessels (1957 Convention) are understood to be applicable in Mozambique. The shipowner is legally entitled to limit its liability in respect of claims pertaining to the situations foreseen in article 2 of the 1957 Convention (eg, loss of life of, or personal injury to any person, and loss of, or damage to, any property).

In addition to the above conventions, it is also important to consider the limitations arising from the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules), concerning the limitation of liability relating to the carriage of goods by sea. The carrier (in its capacity as shipowner or charterer of the vessel) is also legally entitled to limit its liability under those rules.

Procedure

11 | What is the procedure for establishing limitation?

In accordance with the 1957 Convention, the shipowner or other entitled person can only limit its responsibility through the establishment of a limitation fund. The limitation fund can only be established in respect of a claim that has already been commenced. The limitation fund can be established in any way admitted by law. It is, however, dependent on the filing of a proper application before the relevant court (cash deposit is not necessary), which must identify or list:

- the occurrence and damages;
- the amount of the limitation fund;
- how the fund will be established;
- the amount of the reserve; and
- the known creditors and the amount of their claims.

The application must be filed together with the vessel's documents supporting the calculation of the amount of the fund (eg, a tonnage certificate).

Break of limitation

12 | In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

The shipowner or other entitled person cannot limit its responsibility where the occurrence giving rise to the claim resulted from 'the actual fault or privity of the owner'.

Passenger and luggage claims

13 | What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

Mozambique is not a contracting party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. The carriage of passengers is governed in general by the Mozambican Civil and Commercial Codes and the Consumer Law, in addition to the individual terms of the contract of carriage. There are no limitation legal regimes applicable in Mozambique in respect of passenger and luggage claims. In the event of delays, unexpected changes of route, interruption of the transport, damages or loss of carriage, passengers are entitled to claim compensation for losses and damage caused by an action attributed to the carrier, regardless of its wilful misconduct. In addition, any expenses that the passenger may incur that arise from the delay, interruption or change of route shall be undertaken by the carrier.

PORT STATE CONTROL

Authorities

14 | Which body is the port state control agency? Under what authority does it operate?

The National Maritime Institute (INAMAR) is the public entity is responsible for exercising port state control over all maritime activities in Mozambique. INAMAR acts under the authority of the Ministry of Sea, Internal Waters and Fisheries.

Sanctions

15 | What sanctions may the port state control inspector impose?

INAMAR holds the authority to inspect all vessels operating in Mozambique and to assess fines for infringements detected. In addition to the assessment of fines, the lack of compliance with the applicable laws and regulations may lead to the detention of the relevant vessel. In such cases, a guarantee must be put before the INAMAR as a precondition to the release of the vessel.

Appeal

16 | What is the appeal process against detention orders or fines?

Any sanction may be appealed directly to INAMAR's administrative body who applied it or the general director of INAMAR. Sanctions may also be challenged by appealing to the competent courts.

CLASSIFICATION SOCIETIES

Approved classification societies

17 | Which are the approved classification societies?

Currently, the number of classification societies operating in the country is very limited. Lloyd's Register and Bureau Veritas have established their presence in the country, and in view of the growing prospects for offshore liquefied natural gas projects in the country, there are rumours that other main classification societies are planning to enhance their

local presence (these include DNV GL and the American Bureau of Shipping).

Liability

18 | In what circumstances can a classification society be held liable, if at all?

There is no specific legislation dealing with the liability of classification societies in Mozambique. However, we are of the opinion that the general principles of civil and criminal liability must be applied.

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

19 | Can the state or local authority order wreck removal?

Yes, when there is a risk to the safety of navigation or to the environment (pollution).

When the shipowner fails to comply with the instructions issued by the Port and Maritime Authorities in respect thereof, the National Maritime Institute can appoint a third party to remove the wreck, being the shipowner responsible for the payment of the relevant fees and charges.

International conventions

20 | Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

Mozambique has ratified the following international conventions and regulations in relation to collision matters:

- 1910 International Convention for the Unification of Certain Rules of Law Related to Collision Between Vessels;
- 1952 International Convention for the Unification of Certain Rules concerning Civil Jurisdiction in Matters of Collision;
- 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation; and
- 1972 International Regulations for Preventing Collisions at Sea.

Mozambique is not a signatory of the Nairobi International Convention on the Removal of Wrecks 2007, and wreck removals are governed by domestic law.

Salvage operations are governed by:

- the 1910 Salvage Convention;
- Articles 679-690 of the Third Book of the Commercial Code, of 28 June 1888, as amended by Decree No. 2/2005, of 27 December 2005 (the Commercial Code); and
- Legislative Diploma No. 96/72, of 12 October 1972.

Mozambique is not a signatory of the 1989 Salvage Convention.

In relation to pollution, the following international conventions and protocols are in force in Mozambique:

- 1985 Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, and Related Protocols;
- 1973 International Convention for the Prevention of Pollution from Vessels (MARPOL 73/78) and Annexes I/II, III, IV and V;
- 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90);
- 1992 Protocol to Amend the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC 1969); and
- 1992 Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND).

Salvage

21 | Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory local form of salvage agreement, meaning that the parties are free to agree on the same or resort to any standard form in this regard (Lloyd's standard form of salvage agreement being acceptable).

The master of any vessel, ship or other craft, or the person in command of any such vessel, ship or other craft, is obliged to render salvage to persons in distress at sea, provided this does not involve a serious risk to his or her vessel, ship or other craft or to persons on board, and that his or her action entail the least possible environmental damage.

SHIP ARREST

International conventions

22 | Which international convention regarding the arrest of ships is in force in your jurisdiction?

The International Convention Relating to the Arrest of Sea-Going Ships 1952 (Brussels Convention) applies in Mozambique.

Claims

23 | In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Under the Brussels Convention, any person alleging to have a maritime claim is entitled to seek the arrest of a vessel. A 'maritime claim' is deemed to be a claim that arises out of one or more of the situations foreseen in article 1.1 of the 1952 Convention.

A claimant may seek the arrest of either the vessel in respect of which the maritime claim arose, or any other associated vessel as long as both vessels are owned by the same person(s). Associated ships may not be arrested in situations foreseen in article 1.1, (o), (p) or (q) of the Brussels Convention.

Pursuant to paragraph (4) of article 3 of the Brussels Convention, in the case of a claim against a bareboat charterer, the claimant may seek the arrest of the bareboat (demise) chartered vessel or any other vessel in the ownership of the bareboat charterer, as the charterer and not the registered owner is liable in respect of such maritime claim relating to that vessel. However, no other vessel of the ownership of the registered owner may be arrested in respect of such maritime claim. The above-mentioned legal regime also applies to any case where a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

Maritime liens

24 | Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Yes. Although it is understood that the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (1926 Convention) is not applicable in Mozambique, Article 578 of the Commercial Code specifies the following categories of claims affording a maritime lien:

- 1 court costs incurred in the common interest of the creditors;
- 2 remuneration for salvage;

- 3 pilotage and towage expenses;
- 4 tonnage, lights, anchorage, public health, and other harbour dues;
- 5 expenses made in connection with a vessel's maintenance and storage of her appurtenances;
- 6 master and crew wages;
- 7 costs incurred in connection with the repair of the vessel, her appurtenances and equipment;
- 8 reimbursement of the price of the cargo that the master was forced to sell;
- 9 insurance premiums;
- 10 any unpaid portion of the price due in connection with the purchase of a vessel;
- 11 costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the last three years;
- 12 unpaid amounts arising from shipbuilding contracts;
- 13 outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances, not mentioned in (11); and
- 14 sums due to shippers in respect of loss or damage to cargo.

Claims mentioned in (1) to (9) refer to those incurred in the previous voyage and as a cause of it.

Wrongful arrest

25 | What is the test for wrongful arrest?

According to article 621 of the Civil Code, if the arrest is rendered unjustified or otherwise expires on account of the applicant, same will be held liable for damages caused to the respondent, when it is proved that it failed to act with the necessary normal prudence or due care. Also, if the arrest is in place and the claimant fails to file the initial claim for the main proceedings, within 30 days of the arrest order, the arrest shall be lifted (article 382 of the Civil Procedure Code).

Bunker suppliers

26 | Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

There is no case law in Mozambique in this regard. Perhaps it would be possible to arrest a vessel in this case, but where the charterer is not the owner it would be difficult to enforce the security unless there is a lien over the vessel.

Security

27 | Will the arresting party have to provide security and in what form and amount?

As a matter of principle, no security is required. Still, the judge is free to decide otherwise and ask the applicant to provide security in an adequate amount and form. Unless otherwise determined by the judge, the amount of the security generally corresponds to the amount of the claim. The security can be posted in any form acceptable by the court, cash deposits and bank guarantees (in terms to be agreed) being the most usual forms.

- 28 | How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

Typically, the amount of the security corresponds to the amount of the claim. This notwithstanding, the judge may end up reviewing it subsequently, namely where the amount being claimed does not reflect the amount being effectively disputed. Experience tells us that the amount of the security is not likely to exceed the value of the ship. Security can be posted in any form acceptable by the court or by the arresting party (eg, letter of intent issued by a P&I club).

Formalities

- 29 | What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

Lawyers are appointed by means of a power of attorney. Where issued abroad, and as a condition for their local acceptance and enforceability, powers of attorney must be previously notarised, legalised (before the Ministry of Foreign Affairs or equivalent body), translated into Portuguese language (by a sworn translator) and then consularised before the Mozambican Embassy or Consulate with jurisdiction over the country of their issuance (Mozambique is not a party to the 1961 Hague Apostille Convention).

The original power of attorney must be attached to the arrest application at the time of its filing. When that is not possible, lawyers may ask the court to grant additional time for submitting the original (where the original power of attorney is not available, the arrest application must be submitted along with a scanned (coloured) copy of the original power of attorney).

Although the submission of original documents is required, it is common practice to present scanned copies of the same, which in most cases is accepted. Still, courts are always entitled to disregard copies or ask the parties to submit the relevant originals.

Documents submitted to the court must be written in the Portuguese language. When written in a different language, parties are required to submit the relevant originals along with their translation into the Portuguese language (the translation should be certified by a sworn translator).

Where, in view of the urgency, there is insufficient time available to file the arrest application in compliance with all the required formalities, it is still possible to set the arrest procedure in motion while undertaking to the court to complete the formalities in a reasonable period of time (typically, no more than 10 calendar days).

Documents cannot be filed electronically.

There is no specific term for the preparation of an arrest application; this will typically depend on the urgency of the relevant arrest and on the complexity of the underlying claim.

Ship maintenance

- 30 | Who is responsible for the maintenance of the vessel while under arrest?

With the issuance of the arrest order, the court will appoint a depository or custodian agent for the vessel. This agent shall be responsible for supervising the maintenance of the vessel (it is up to the owner or master and relevant crew to ensure the maintenance of the vessel in the first instance; the depository or custodian agent should only be responsible for the maintenance of the vessel in the absence of her crew or where urgent decisions are to be taken).

Proceedings on the merits

- 31 | Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Claims on the merits should be initiated before the court having jurisdiction for such by reference to the law governing the contract. The arrestor may, therefore, pursue the main claim on its merits with a foreign court. The claimant is required to file the initial claim for the main proceedings of which the arrest will form an integral part within 30 days of the arrest order. However, an extension of this 30 days deadline may be required considering the difficulties of commencing procedures before a foreign court.

Injunctions and other forms of attachment

- 32 | Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Apart from the ship arrest, the claimant may seek to obtain security through the attachment of any other property owned by the debtor (other than vessels) and non-specified injunctions.

Delivery up and preservation orders

- 33 | Are orders for delivery up or preservation of evidence or property available?

Parties may file a motion requiring the court for the preservation of documents or property whenever there is a serious risk of their loss, concealment or dissipation. The relevant motion can be lodged whenever deemed suitable, but the applicant is required to provide due grounds for its request. Parties may also request the production of evidence within the control of the other party or request the anticipatory production of evidence (even before the proceedings are commenced) if there is a justifiable concern that the production of evidence at a later stage will be impossible or very difficult.

Bunker arrest and attachment

- 34 | Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Yes, bunkers may be arrested by reference to the provisions of the Code of Civil Procedure (ie, the claimant is required to provide evidence on the likelihood of its right or credit, and that, unless the bunkers are arrested, the claimant will have no other means of securing its credit).

JUDICIAL SALE OF VESSELS

Eligible applicants

- 35 | Who can apply for judicial sale of an arrested vessel?

In principle, the arrestor or any creditor can seek the judicial sale of the arrested vessel.

Procedure

- 36 | What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

In principle, the judicial sale of a ship cannot take place during the arrest proceedings, requiring the bringing of a subsequent enforcement proceeding, in which the arrest is converted into a seizure of the vessel after the existence of the credit has been recognised by the competent court. After an enforcement application is lodged, the court shall notify the debtor (owner or charterer and other interested parties) to settle the claim or oppose the enforcement and the seizure. If the debtor fails to pay or if no opposition is lodged within an appropriate period, the court will order the sale. To that extent, the court will then decide on how the sale will take place (public auction, private negotiation, sealed bids) and will appoint an auctioneer who will be responsible for the relevant proceedings and arrangements (such as organising the tender and visits to the vessel, collecting the bids, getting the proceeds of the sale and liaising with the court). The debtor will have the power to recover the vessel at any time before completion of the judicial sale, provided it deposits with the court the amount of the credit plus fees and expenses. The proceeds arising from the sale of the vessel will be used to pay the claimant or other creditors with prevailing rights over the vessel that have claimed credits in the proceedings, the court costs and expenses (including auctioneer's fees) and other credits and expenses. Lastly, the judicial sale of a vessel can take several months to complete.

Claim priority

- 37 | What is the order of priority of claims against the proceeds of sale?

The order of priority of claims against the proceeds arising from the sale is established under article 578 of the Mozambican 1888 Commercial Code as follows:

- court costs and expenses made in the common interest of the creditors;
- salaries due for assistance and salvage;
- pilotage and towing expenses for entering the port;
- tonnage, lighthouse, anchor, public health and any other harbour dues;
- expenses with the custody of the ship and warehousing of its belongings;
- wages for the master and crew;
- expenses incurred, and repairs made for the needs of the ship and its equipment;
- reimbursement of the price of the cargo that the master had to sell;
- insurance premiums;
- amounts in debt referring to the last purchase price of the ship;
- expenses incurred with repairs of the ship and equipment during the last three years before the voyage and starting from the time the repairs were concluded;
- debts arising from the contracts for the building of the ship;
- insurance premiums referring to the ship, if of the whole ship is insured or only part of its accessories; not included in the insurance premiums listed above; and
- compensation due to the shippers for lack of delivery or damaged cargo.

Ship mortgages rank immediately after the credits above listed and prefer to other liens or claims assisting to unsecured creditors.

Legal effects

- 38 | What are the legal effects or consequences of judicial sale of a vessel?

The vessel is sold 'as is and where is' and free from any charges or encumbrances (including maritime liens), thereby clean title is given to the purchaser.

Foreign sales

- 39 | Will judicial sale of a vessel in a foreign jurisdiction be recognised?

Yes. A judicial sale decision as any other judgment awarded by a foreign court shall be subject to revision and confirmation by the Mozambican Supreme Court to be valid and enforceable in Mozambique.

International conventions

- 40 | Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

No.

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

- 41 | Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

The 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules) is applicable in Mozambique. The Hague-Visby Rules, Hamburg Rules and the Rotterdam Rules are not applicable in Mozambique. Pursuant to the Hague Rules, the carriage of goods by the sea covers the period comprised between the time when goods are loaded on board a vessel at the relevant shipping port and the time of their discharge at the port of arrival.

Multimodal carriage

- 42 | Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

There are currently no specific multimodal legal instruments in force in Mozambique. In any case, pursuant to the principle of private autonomy, parties are free to incorporate specific provisions from the UNCTAD/ICC Rules in the carriage contracts they enter.

Title to sue

- 43 | Who has title to sue on a bill of lading?

In principle, the parties entitled to sue on a bill of lading are the shipper, the carrier and the consignee.

Charter parties

44 | To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Pursuant to the principle of private autonomy, the parties to a carriage contract are free to incorporate the terms of the charter party into the bill of lading, without any limitation or restriction. Both article 99(3)(e) of the Civil Procedure Code and the Law on Arbitration, Conciliation and Mediation, enacted by Law No. 11/99, of 8 July 1999, make the validity of the jurisdiction or arbitration clause dependant on the existence of a written agreement or written confirmation expressly mentioning the competent jurisdiction. If there is written reference to the jurisdiction or arbitration clause in the bill of lading and these terms have been acknowledged and accepted, the jurisdiction or arbitration clause shall be binding on any third party holding the bill of lading.

Demise and identity of carrier clauses

45 | Is the 'demise' clause or identity of carrier clause recognised and binding?

The carrier shall be identifiable at all times. If not, the bill of lading is deemed not enforceable against the same.

Shipowner liability and defences

46 | Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Pursuant to the Hague Rules, the carrier is liable as regards the consignee in relation to the loading, handling, stowage, carriage, custody, care and discharge of goods (the parties may foresee specific provision in the relevant contract). The rights under a contract carriage may be validly transferred to third parties either by way of assignment of contractual position or subrogation rights.

Where it is not possible to identify the carrier from the contents of the bill of lading and where the latter was issued by a party other than the same, there are grounds to argue that the vessel (represented by her owner) may potentially be sued.

Deviation from route

47 | What is the effect of deviation from a vessel's route on contractual defences?

Any deviation from the vessel's route for a reason attributable to the carrier and that may result in a damage to the shipper shall be sanctioned in accordance with terms set in the carriage contract and the general principles of civil liability. Nevertheless, route deviations that fall under the scope of article 4, paragraph 4 of the Hague Rules Convention are allowed.

Liens

48 | What liens can be exercised?

The following liens can be exercised:

- liens accruing from the last voyage:
 - legal costs incurred in the common interest of all creditors;
 - remuneration for salvage;
 - pilotage and towage;

- harbour dues;
- costs of custody;
- crew wages;
- supplies and repairs to the vessel; and
- insurance premiums;
- other maritime liens:
 - any unpaid portion of the purchase price;
 - repair costs accruing during the last three years;
 - unpaid amounts arising from shipbuilding contracts;
 - outstanding insurance premiums other than those relating to the last voyage; and
 - sums due to shippers in respect of loss or damage to cargo; and
 - mortgages, hypothec and similar charges; and
- all other claims in rem thereafter rank pari passu.

Delivery without bill of lading

49 | What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

If the carrier delivers the cargo without producing the bill of lading, the carrier shall be deemed responsible for any damages and losses arising therefrom to the cargo owner.

Shipper responsibilities and liabilities

50 | What are the responsibilities and liabilities of the shipper?

The Hague Rules Convention sets out the contractual obligations of the shipper (in accordance with article 3, paragraph 5 of the Hague Rules Convention), stating that the shipper shall provide the carrier with accurate data or information concerning the shipment and shall compensate the latter for any damages or losses that may occur due to inaccurate data or information provided by the shipper. However, pursuant to article 4, paragraph 3 of the Hague Rules Convention, the shipper will not be liable for any damages or losses sustained by the carrier or ship due to any act, omission or neglect not attributable to the shipper, his or her agents or employees, or any third party hired by him or her.

SHIPPING EMISSIONS

Emission control areas

51 | Is there an emission control area (ECA) in force in your domestic territorial waters?

No.

Sulphur cap

52 | What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

Currently, there is no specific legislation dealing with this matter. Still, all seems to indicate that the idea is that the cap on the sulphur content of fuel oil in Mozambican waters will be 0.5 per cent m/m, as per Annex VI of MARPOL.

SHIP RECYCLING

Regulation and facilities

53 | What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

Mozambique is not a signatory of the International Convention for the Safe and Environmentally Sound Recycling of Ships (2009). Further, there is no specific legislation dealing with ship recycling. In addition, Mozambique has no ship recycling facilities.

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

54 | Which courts exercise jurisdiction over maritime disputes?

The enactment of Law 5/96 allowed for specialist courts in maritime and shipping matters to be created in the most important cities of Mozambique, such as Maputo, Inhambane, Beira, Quelimane, Nacala and Pemba. However, such specialised courts have not yet been created, therefore jurisdiction over maritime and shipping matters is exercised by the provincial judicial courts. Recently, the creation of these specialised courts has been under discussion and it is expected that they will be created shortly.

Service of proceedings

55 | In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

If the defendant is located outside Mozambique, service of court is made through a precatory letter to the competent authorities of the country where service is sought.

Arbitration

56 | Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

No. There is no domestic arbitral institution specialising in maritime arbitration. The government of Mozambique created the Centre for Arbitration, Conciliation and Mediation, as well as other alternative dispute resolution mechanisms to promote arbitration.

Foreign judgments and arbitral awards

57 | What rules govern recognition and enforcement of foreign judgments and arbitral awards?

Articles 1094 and 1095 of the Code of Civil Procedure foresee that any judgment awarded by a foreign court is, as a rule, subject to review and confirmation by the Supreme Court to be valid and enforceable locally (eg, to obtain the exequatur). The review and confirmation of a foreign decision is mostly formal and should not involve a review on the merits or grounds of the judgment.

However, for the foreign decision to be recognised in Mozambique, the following set of requirements must be met:

- there are no doubts that the judgment is authentic and that its content is understandable;
- it must constitute a final decision (not subject to appeal) in the country in which it was rendered;
- the decision must have been rendered by the relevant court in accordance with the Mozambican conflict-of-law rules;
- there is no case pending before or decided by a Mozambican court, except if it was the foreign court that prevented the jurisdiction of the Mozambican court;

- the defendant was served proper notice of the claim in accordance with the law of the country in which the judgment was rendered, except in cases where, under Mozambican law, there is no need to notify the defendant, or in cases where the judgment is passed against the defendant because there was no opposition;
- the judgment is not contrary to the public policy principles of the Mozambican state; and
- the decision rendered against the Mozambican citizen or company does not conflict with Mozambican private law, in cases where this law could be applicable in accordance with the Mozambican conflict-of-law rules.

Given that Mozambique has acceded to the 1958 New York Convention, by means of Resolution 38/16 of 12 August, courts may only refuse an award rendered in any other signatory to the New York Convention on the grounds stated therein. Where the arbitral award was not rendered in another contracting state, to be enforceable the award must have previously been reviewed and confirmed by Mozambique's Supreme Court.

Mozambique is a party to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Asymmetric agreements

58 | Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

Asymmetric jurisdiction and arbitration agreements are not directly regulated under Mozambican Law and we are also unaware of any decisions of Mozambican courts on this matter. Choice of jurisdiction agreements are directly foreseen on the Code of Civil Procedure and its validity is subject to a few formal requirements.

Breach of jurisdiction clause

59 | What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

There are no specific remedies in case proceedings that are commenced in a foreign court in breach of a clause that determined the jurisdiction of a Mozambican court. The clause must be invoked before the court that lacks jurisdiction.

60 | What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

The defendant may raise the lack of jurisdiction of the Mozambican court to hear the dispute as an argument of defence and request it to dismiss the claim.

LIMITATION PERIODS FOR LIABILITY

Time limits

61 | What time limits apply to claims? Is it possible to extend the time limit by agreement?

In accordance with the Civil Code, claims for breach of contract are subject to the ordinary statute of limitations of 20 years and claims for liability in tort are subject to a shorter statute of limitations of three years.

Statutes of limitation may not be extended by agreement; however, there are several circumstances in which they can be suspended, and they can generally be interrupted by court service or judicial notice of

any act that expresses intention of exercising the relevant right (or any judicial act that performs the same function), through the execution of an arbitration agreement or by the recognition of the debt.

Court-ordered extension

62 | May courts or arbitral tribunals extend the time limits?

Courts and arbitral tribunals may not extend statutes of limitation.

MISCELLANEOUS

Maritime Labour Convention

63 | How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

The Maritime Labour Convention was put in force in Mozambique by Resolution No. 5/2018, of 18 September 2018. There is not enough of a track record of its implementation and application by the courts to evaluate.

Relief from contractual obligations

64 | Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Article 437 of the Civil Code allows a party to terminate or to seek the amendment of the contract on equity grounds whenever the circumstances on which the parties based their decision to enter into an agreement have suffered an abnormal change. However, this legal regime is based on strict requirements, notably that the event giving rise to the changes in circumstances renders the performance of the contract excessively onerous such that performance would seriously affect the principles of good faith and that such onerousness is not covered by the risks inherent to the contract in question. Mere difficulties to perform the contract or losses emerging thereof will not suffice for the application of the change of circumstances legal rules.

Furthermore, the affected party must not be in default when invoking the changes in circumstances.

The relevant contract may foresee specific clauses to deal with this type of situations, such as 'hardship' clauses, in which case its terms and conditions may set aside or complement the legal regime of article 437.

Other noteworthy points

65 | Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

No.

UPDATE AND TRENDS

Key developments of the past year

66 | Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

Over the last 10 years, Mozambique reformed the sector, steadily passing a significant number of laws and regulations, and ratifying and acceding to key international treaties and conventions. The underlying purpose was clear: adopt the best international regulations and practices in the industry and take advantage of the country's strategic location and impact of the multimillion gas project in the Rovuma Basin,



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Northern Mozambique, to attract more foreign direct investment to the country and develop the existing port and logistic infrastructure to boost the economy.

As part of this ongoing reform, in 2020 the government approved the Regulations of Management and Planning of Coastal Zone and Beaches (Decree No. 97/2020, of 4 October 2020), at the same time that it has open to public consultation a draft of the Marine Traffic Regulation, which aims to govern maritime traffic in Mozambican waters to ensure the safety of navigation, life and property, and to protect the environment. Moreover, there were rumours that the Ministry of Transport was working on a new bill to consolidate and update the outdated Navy Merchant Laws and Regulations, some of which date from the 19th century. The recently announced revision of the Commercial Code is also likely to bring changes to the sector as well, as the backbone of the country's current shipping legal framework is still the Third Book of the Commercial Code, of 28 June 1888.

Regardless of the efforts made, the fact is that insurgency in Cabo Delgado, Northern Mozambique will put maritime security in the Western Indian Ocean at risk and consequently will halt the continuous increase of imports and exports that the country was experiencing since 2014, as the increase was directly linked to the investment flows related to the development of the major gas projects running in Offshore Areas 1 and 4 of the Rovuma Basin, and Total, which was the operator of Area 1, recently declared a force majeure event and suspended its US\$28 billion liquid natural gas project due to the escalation of violence in the area.

Regardless, Mozambican authorities are focused on controlling the insurgency and helping Total to resume activities, so that the country can get back on track and continue implementing reforms.

Coronavirus

67 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Mozambican state implemented a number of laws and measures aimed at containing the spread of the covid-19 pandemic. The legislation is temporary, being in force for as long as the pandemic threat to public

health remains, and overrides the application of the existing laws which remain unchanged.

A state of emergency was declared at midnight of 1 April 2020 and remained in place until 11.59 pm of 6 September 2020. From that point, a state of public calamity was declared and is still in force. The declaration of a state of emergency or public calamity determines or allows for the determination of partial suspension of citizens' rights, freedoms and guarantees based on the occurrence (or threat) of a public disaster such as the pandemic.

The state has approved a number of transitional measures aimed at ensuring that the transportation sector keeps operating while the situation of public calamity is in place, such as compulsory health screenings for all vessels' crews, imposing restrictions on the disembarkation of crew members during ships' stays in Mozambican ports, and the application of additional requirements and measures to ships calling at national ports.

In view of the above, we recommend that clients performing shipping activities in Mozambique or calling at a Mozambican port plan their voyage with adequate advance and keep in close contact with the local port and maritime authorities to ensure that all the applicable requirements (which are amended from time-to-time) are complied with.

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